

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JOHNATHAN WEST,

Plaintiff,

v.

CIVIL ACTION NO. 2:09-cv-00985

AMERICAN ELECTRIC POWER COMPANY, INC.,

Defendant.

MEMORANDUM OPINION & ORDER

Pending before the court is the third party defendant Art & Lola, Inc.'s ("A&L") Motion to Set Aside Default [Docket 26]. Finding good cause, the court **GRANTS** this Motion.

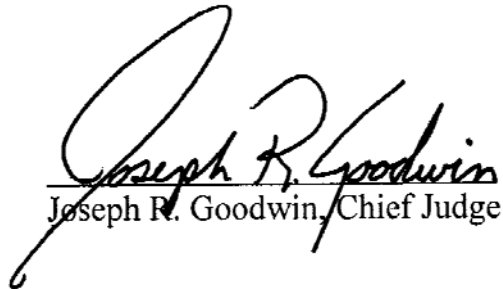
Federal Rule of Civil Procedure 55 provides that a court may, "for good cause," set aside an entry of default. Fed. R. Civ. Proc. 55(c). "When deciding whether to set aside an entry of default, a district court should consider whether the moving party has a meritorious defense, whether it acts with reasonable promptness, the personal responsibility of the defaulting party, the prejudice to the party, whether there is a history of dilatory action, and the availability of sanctions less drastic." *Payne ex rel. Estate of Calzada v. Brake*, 439 F.3d 198, 204-05 (4th Cir. 2006).

A&L avers that it has "at least two bona fide defenses" to the third party plaintiff's complaint (Mot. 1). Moreover, it filed its Motion to Set Aside Default only three days after the Clerk's Entry of Default [Docket 23], on the same day it filed a Notice of Attorney Appearance [Docket 24]. A&L is clearly at fault in defaulting; it admits that it misplaced the summons and complaint, and "mistakenly believed" that it had thirty days to respond, as permitted by state rather than federal law.

(*Id.*) However, the third party action remains in its infancy, and the promptness of A&L's motion should minimize or eliminate prejudice to the third party plaintiff. Accordingly, the court **GRANTS** this motion and directs A&L to respond to the third party complaint within twenty-one days of this Order.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: May 13, 2010



Joseph R. Goodwin, Chief Judge